



Student Confidentiality: HIPAA and FERPA in the School Setting

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Objectives:

At the conclusion of this presentation the learner will be able to:

1. Define HIPAA and FERPA
2. Discuss the similarities and differences in the two privacy laws
3. Discuss the implications of confidentiality laws in the school setting



Confidentiality Best Practice

Obtain written consent!



What is HIPAA?

Health Insurance Portability and
Accountability Act of 1996, Public Law 104-191

Key document: *The Standards for Privacy of
Individually Identifiable Health Information*

The Privacy Rule



Who is a “covered entity” and must comply with HIPAA rules?

Health Plans

Health Care Providers

Health Care Clearinghouses



What information is covered?

The Privacy Rule protects all “individually identifiable health information” held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral.



How does HIPAA Impact School Practices?

- Health care providers who electronically transmit health information in connection with certain transactions are covered entities.
- Schools could be covered entities if billing Medicaid for Medicaid covered services in the school setting.
- Health care professionals we collaborate with are subject to HIPAA standards.



What information can a covered entity share without written consent?

Information for treatment, payment, and health care operations

What is FERPA?

- Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99)
- Enacted in 1974 to protect student education records
- Applies to all public and private schools that accept federal funds

What are education records?

- Records directly related to a student and maintained by an educational agency
- Student health records at the elementary and secondary level (immunization record, physical exam, health screening results, etc.)
- Nurses and Practitioners of the Healing Arts notes (documentation) in the official student file
- Special Education records



Rights of Parents and Eligible Students

Right to:

Inspect and Review

Request Amendment

Privacy of PII (Personally Identifiable
Information)

File a complaint

What is Personally Identifiable Information?

- Student's name;
- Name of the student's parent or other family members;
- A personal identifier
- Other direct identifiers
- Information that alone, or in combination, can be linked to a specific student

What is Directory Information?

Examples include:

- Student's name
- Address
- Telephone number
- Date and place of birth
- Honors and awards
- Dates of attendance
- Grade level
- Most previous school attended

When is prior consent not required?

Exceptions which relate to K-12 schools and pertain to school health are:

1. School officials , including teachers, within an agency with whom the agency has determined have legitimate educational interests;
2. To other schools to which the student is transferring;



When is prior consent not required?

3. To comply with a judicial order or lawfully issued subpoena;
4. To appropriate officials in cases of health and safety emergencies; and
5. The disclosure is information the agency has designated as directory information.



FERPA & Public Health

FERPA allows the disclosure of PII without parental consent to **appropriate officials** in cases of **health and safety emergencies**

An emergency means a situation in which there is an articulable and significant threat to the health or safety of students or other individuals.



HIPAA & FERPA Collide

FERPA is more restrictive than HIPAA

Sharing information between HIPAA and FERPA regulated agencies may not be an equal two way exchange



Sample Forms

HIPAA Compliant Authorization

Model Notification of Rights under FERPA

Model Notice for Directory Information

Check your practice

- Are you properly storing health records?
- Does your school division provide
 - Annual notification of Rights under FERPA
 - Annual notice for Directory Information
 - Annual disclosure of who has a “legitimate educational interest”
- Are you requesting parental permission to share information on an annual basis, using a HIPAA compliant form?

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Additional Resources

Confident About Confidentiality?

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Have additional questions? Contact:

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